

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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THEODORE SMITH,

Plaintiff,

v.

DR. GAMBARO, et al.,

Defendants.

OPINION and ORDER

Case No. 17-cv-70-wmc

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*Pro se* plaintiff Theodore Smith, an inmate at Columbia Correctional Institution (“Columbia”) is proceeding in this lawsuit against several Columbia employees on Eighth Amendment deliberate indifference, excessive force and conditions of confinement claims. On March 5, 2020, defendants filed a motion for summary judgment for failure to exhaust administrative remedies. (Dkt. #21.) On June 5, 2020, after Smith missed his opposition deadline, the court issued an order giving Smith until June 26, 2020, to file a response to defendants’ motion for summary judgment. (Dkt. #27.) Instead of responding to defendants’ motion, on June 10, 2020, Smith filed a motion for extension of time, and Magistrate Judge Crocker gave him until July 6, 2020, to respond, noting that defendants had filed their motion three months ago and Smith’s obligation to respond was not substantial. (Dkt. #29.) That new deadline has passed, and the court has received nothing from Smith. Accordingly, having heard nothing from Smith, the court is now granting defendants’ motion for summary judgment as unopposed, and his claims in this lawsuit will be dismissed without prejudice for failure to exhaust his administrative remedies. *See*

*Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004) (dismissal for failure to exhaust administrative remedies is always without prejudice).

ORDER

IT IS ORDERED that:

- 1) Defendants' motion for summary judgment (dkt. #21) is GRANTED as unopposed.
- 2) Plaintiff Theodore Smith's claims in this lawsuit are DISMISSED without prejudice.
- 3) The clerk of court is directed to enter judgment accordingly.

Dated this 16th day of July, 2020.

BY THE COURT:

/s/  
WILLIAM M. CONLEY  
District Judge